

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 30, 2021

1:33 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 5

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; and relating to the budget reserve fund.

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 7

Proposing amendments to the Constitution of the State of Alaska relating to prohibiting the establishment of a state tax without the approval of the voters of the state; and relating to the initiative process.

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 6

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

- BILL HEARING CANCELED

SENATE BILL NO. 53

"An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; relating to an advisory vote on the permanent fund; providing for an effective

date by repealing the effective date of sec. 8, ch. 16, SLA 2018; and providing for an effective date."

- BILL HEARING CANCELED

SENATE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SJR 5

SHORT TITLE: CONST. AM: APPROP LIMIT; BUDGET RESERVE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD, FIN
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/04/21	(S)	Heard & Held
02/04/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard
02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/23/21	(S)	Moved SJR 5 Out of Committee
02/23/21	(S)	MINUTE(STA)
02/24/21	(S)	STA RPT 1DP 2NR 1AM
02/24/21	(S)	DP: HOLLAND
02/24/21	(S)	NR: SHOWER, COSTELLO
02/24/21	(S)	AM: KAWASAKI
04/28/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/28/21	(S)	-- MEETING CANCELED --
04/30/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SJR 7

SHORT TITLE: CONST. AM: STATE TAX; VOTER APPROVAL

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD, FIN
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/04/21	(S)	Heard & Held
02/04/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard

02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/23/21	(S)	Moved SJR 7 Out of Committee
02/23/21	(S)	MINUTE(STA)
02/24/21	(S)	STA RPT 1DP 3NR
02/24/21	(S)	DP: SHOWER
02/24/21	(S)	NR: HOLLAND, KAWASAKI, COSTELLO
04/28/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/28/21	(S)	-- MEETING CANCELED --
04/30/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

NEIL STEININGER, Director
Office of Management & Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Co-presented a PowerPoint on SJR 5, on behalf of the administration.

CAROLINE SCHULTZ, Policy Analyst
Office of Management & Budget (OMB)
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Co-presented a PowerPoint on SJR 5, on behalf of the administration.

WILLIAM MILKS, Senior Assistant Attorney General
Legislation & Regulations Section
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions on SJR 5.

MIKE COONS, President
Mat-Su Chapter
Association of Mature Citizens (AMAC) Action
Palmer, Alaska

POSITION STATEMENT: Testified in support of SJR 5.

QUINN TOWNSEND, Policy Manager
Alaska Policy Forum
Pittsburgh, Pennsylvania

POSITION STATEMENT: Testified in support of SJR 5.

BERT HOUGHTALING, representing self
Big Lake, Alaska

POSITION STATEMENT: Testified in support of SJR 5.

MIKE BARNHILL, Deputy Commissioner
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint on SJR 7 on behalf of the administration.

MIKE COONS, President
Association of Mature American Citizens (AMAC)
Mat-Su Chapter
Palmer, Alaska

POSITION STATEMENT: Testified in support of SJR 7.

BERT HOUGHTALING, representing self
Big Lake, Alaska

POSITION STATEMENT: Testified in support of SJR 7.

ACTION NARRATIVE

[1:33:15 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Myers, Hughes, Shower, Kiehl, and Chair Holland.

SJR 5-CONST. AM: APPROP LIMIT; BUDGET RESERVE

[1:33:56 PM](#)

CHAIR HOLLAND announced the consideration of SENATE JOINT RESOLUTION NO. 5, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; and relating to the budget reserve fund.

[This was the first hearing on SJR 5.]

[1:34:52 PM](#)

NEIL STEININGER, Director, Office of Management & Budget, Office of the Governor, Juneau, Alaska, began a PowerPoint on SJR 5 by reviewing slide 2, historical savings balances. He said this chart shows the historical saving balances, revenues and expenditures over the last decade. In FY 2013, the state savings peaked at over \$16 billion in the Constitutional Budget Reserve (CBR) and the Statutory Budget Reserve accounts. The state also increased expenditures at that time, as shown by the red lines on the chart. Those expenditures were allowed to increase due to the higher revenues that preceded the buildup of these savings

balances. The state's current constitutional spending limit is ineffective in controlling state spending growth, so as revenue has increased, peaking in fiscal year 2012, expenditures kept pace with revenues. These expenditures were unsustainable once revenues diminished. This is better illustrated on the graph on slide 3, he said.

[1:35:56 PM](#)

MR. STEININGER reviewed the current limit in Art. XI, Sec. 16 of the Alaska Constitution, on slide 3. He said the solid dark line shows the current constitutional spending limit, which in FY 1982 was a reasonable constraint. However, spending has outpaced any reasonable limitation since then. The graph shows that there were only two years in which the state had sufficient revenues to meet the calculated spending limit. The green line shows the unrestricted general fund (UGF) revenue, the orange line shows unrestricted general fund (UGF) spending, and the dotted line shows "what if" SJR 5 had been implemented in 1982. Under that regime, the spending limit more closely matched the constrained spending with some flexibility for change. He said it would have prevented the run-up when revenue peaked in the early 2000s.

MR. STEININGER reviewed the historical spending limit enacted in FY 1982 and approved by the people. He said it had a window for reconsideration and was reaffirmed by the voters. The spending limit concept is fairly popular. He maintained that the current spending limit is ineffective.

[1:37:55 PM](#)

SENATOR SHOWER asked for comments on the projected fund balance if SJR 5 had been enacted in 1982.

CAROLINE SCHULTZ, Policy Analyst, Office of Management & Budget (OMB), Office of the Governor, Juneau, Alaska, responded that the area shown under the orange and green lines would represent about \$35 billion. If those funds had been added to the permanent fund, the permanent fund balance would currently be about \$105 billion had happened. She said a 5 percent percentage-of-market-value (POMV) would be sufficient to cover the UGF expenditures for government.

[1:39:23 PM](#)

SENATOR SHOWER recalled that Mr. King previously estimated that the permanent fund balance could be as high as \$125 billion, depending on the interest and other deposits into the fund. He asked him how deposits made to the Public Employees Retirement System (PERS) several years ago would affect this chart.

1:41:03 PM

MR. STEININGER answered that the PERS payment was not reflected in this graph since those funds were deposited into another state savings account. It is not an expenditure subject to the spending cap. However, the PERS payment was included in graph 2 to illustrate the state's current position since it shows how the Rainy Day Account balances were drawn down by \$16 billion in the last 10 years. He explained that a lot of reductions shown in the orange line were made in the capital budget. He explained that most of the growth in the high years was due to a growing capital budget. When the state began cutting the budget due to declining revenues, the first place it cut was the capital budget.

1:42:20 PM

SENATOR HUGHES referred to UGF spending in FY 1982, depicted by the red line on the graph and said she was surprised to see UGF spending that high. She asked whether it was nominal or inflation-adjusted dollars.

MR. STEININGER answered that the graph reflects nominal dollars.

SENATOR HUGHES offered her view that the spending limit was bringing down expenditures. She said she was surprised to see the spending cap set lower than the most recent budget. She asked if he had any insights as to how that happened.

1:43:44 PM

MS. SCHULTZ responded by briefly reviewing the history of the t. The legislature enacted the constitutional appropriation limit, which the voters approved in 1982 before it went into effect. She offered her belief that voters did not intentionally implement the spending cap lower than expected appropriations.

SENATOR HUGHES stated that SJR 5 proposes a spending limit not designed to start at a point lower than the current appropriation level. According to the graph, in FY 1982, it appears that UGF revenue was about \$.5 billion above the spending limit, which is a considerable difference. She was unsure of the reason for the difference. She related her understanding that perhaps the formula was wrong, such that the adjustment for population and inflation was too much, and it allowed the budget to ramp up.

1:45:28 PM

CHAIR HOLLAND asked OMB to research the figures and report back to the committee.

[1:45:42 PM](#)

MS. SCHULTZ responded that she would not read that assumption into the graph on slide 3. There may be some imprecision in the historical review of UGF spending and differences in accounting for the historical budget figures. She said it is far more likely that there is imprecision in the chart on slide 3, rather than that voters intentionally started with a spending limit that was lower than spending at the time. She offered to research this and report back to the committee with more accurate accounting.

[1:46:27 PM](#)

MR. STEININGER reviewed the SJR 5 constitutional appropriation limit on slide 4, which read:

SJR 5 would amend Art. IX, Sec. 16 of the Alaska Constitution,

Fixing the calculation to limit spending

- May not exceed prior three-year average by more than the greater of inflation or population growth
- Clarifies definition of appropriations subject to cap
- Includes appropriations of state funds (UGF, DGF)
 - Excludes the following appropriations:
 - PFD
 - Bond proceeds and debt service costs
 - Deposits to state savings accounts
 - Disaster response
 - Non-state funds for a specific purpose

MR. STEININGER explained that SJR 5 changes the way the spending limit is calculated in terms of how it is based and the adjustors applied to it. While the current spending cap sets a dollar value base compounded by inflation and population, SJR 5 would use an average base of the prior three years, which is closer to actual spending and the current situation than the ones the state used during the 80s.

MR. STEININGER said this would be accelerated only by the greater of inflation and population. This would still allow for adjustments in spending based on natural pressure on the cost of government, but it does not create a compounding effect over time.

MR. STEININGER said OMB also examined and clarified which appropriations are subject to the cap. The funds subject to the cap include any state funds, including UGF and designated general fund (DGF) but excluding the PFD payments, expenditure of bond proceeds and debt service costs and deposits to the state savings accounts, such as the \$3 billion deposit to the PERS system. It also excludes disaster response and non-state funds for a specific purpose, such as federal receipts for federal programs.

[1:48:59 PM](#)

SENATOR MYERS expressed concern that excluding federal funds could make the state more dependent on the federal government. He related his understanding that about half of the state's budget consists of federal funding.

MR. STEININGER answered that about 40 to 45 percent of the state budget is derived from federal receipts.

[1:49:56 PM](#)

SENATOR HUGHES highlighted that the Medicaid expansion was primarily federally funded, which became problematic when the federal funds were reduced, increasing the state's obligation. She asked if any consideration was given to address this issue.

MR. STEININGER responded that OMB has been discussing this, especially given the current federal climate. Currently, the state is set to receive federal funding for COVID-19. Questions arise as to how this funding will be accounted for with a spending limit based on a three-year average of general fund expenditures once that funding no longer occurs. For example, it raises the issue of how the state will account for funds when the federal government starts a program and then backs off. He said that that issue would need to be resolved to have a spending limit that more effectively constrains growths in general fund expenditures.

[1:51:51 PM](#)

SENATOR SHOWER recalled discussions in prior legislatures about establishing a spending limit. He asked how the capital budget would fit in, including the waterfall provision. The waterfall provision would allow some ability to spend outside the cap in high revenue years to fund capital projects for needed infrastructure. He asked if deflation was addressed because it will place downward pressure on the formula.

MR. STEININGER responded that OMB removed from SJR 5 the language set aside for the capital budget. Thus, all capital spending, including UGF and DGF would be counted under the cap. Similarly, there is no relief value built-in for peak revenue years. How to handle or accommodate those situations would require a policy discussion. In terms of deflation, the way SJR 5 is structured, it is the greater of inflation or population. If the state experiences a deflationary period while the population is stagnant, such that the consumer price index (CPI) dropped and population was zero, this will adjust by zero percent. If population and inflation were down, for example, and the state experienced significant out-migration and a deflationary effect on CPI, it would result in the spending limit ratcheting down by whichever is greater. It could happen, he said.

1:54:26 PM

SENATOR SHOWER continued to stress the necessity of examining how to fund capital projects to catch up in years when revenues are higher than anticipated.

1:54:59 PM

SENATOR HUGHES remarked that she does not like to see Alaska's population reduced. She asked the reason why SJR 5 considers population growth. "I'm not a fan of taxes," she said. When a broad-based tax exists and the population increases, revenue also increases. Without a broad-based tax, as more people move to the state, it will result in a greater need for state spending because the state must provide more public safety, schools, and PFDs. She added that another 10,000 people living in the state does not mean that all state agencies will need more employees.

MR. STEININGER agreed that it does not scale perfectly. When the population increases, not every cost for government services will increase. However, using population growth and inflation as factors makes it a little easier to calculate the escalator. It also avoids the necessity for an economic study each time population fluctuates to determine what portion of that population drove up government services, such as social services programs. He said that using the greater of population or inflation allows for some growth but not unconstrained growth. He explained that OMB contemplated several escalators with sufficient data that were fairly stable and reliable. He pointed out that CPI will not necessarily align to cost changes in Medicaid programs.

[1:57:32 PM](#)

SENATOR MYERS referred to the non-state funds for a specific purpose category, usually federal funds. He stated that the federal government will provide \$1 billion to the state for COVID-19 impacts without requiring any specific purpose be assigned. He asked how those funds would interact with this proposal.

[1:58:04 PM](#)

MR. STEININGER responded that those federal funds will still fall under the category of non-state funds for a specific purpose. He stated that the American Rescue Plan (ARP) does require specific criteria even though they are broad. He cautioned that these funds are not unrestricted funds available for appropriation.

[1:59:10 PM](#)

MR. STEININGER reviewed slide 5, SJR Constitutional Appropriation Limit:

SJR 5 amends article 9, section 17 of the Alaska Constitution: Amends budget reserve fund (CBR) access provisions

- Appropriations from CBR may be made by a majority vote if there are inadequate general fund revenues to meet expenditures

Removes general fund liability to CBR (CBR "sweep")

He explained that Art. IX, Sec. 17 of the Alaska Constitution amends the Constitutional Budget Reserve Fund (CBR) access provisions and allows for appropriations from the CBR by a simple majority vote. It would also remove the CBR "sweep" where the legislature repays CBR debt by sweeping the sub-funds of the general fund. This will enable the CBR to continue being used as a Rainy Day Account, but it removes the 3/4 vote provision.

[2:00:15 PM](#)

MR. STEININGER reviewed slide 6, constitutional appropriation limit. He explained that this slide begins to get into modeling. He deferred to Ms. Schultz to review the economic modeling.

MS. SCHULTZ highlighted hypothetical situations if the legislature had previously implemented SJR 5. She pointed out that the background dotted-gray line represents the current constitutional spending limit, which is ineffective. The lower

dotted-gray line shows what would happen if the constitutional spending limit were reset on the current budget year. It would grow with the compound in population and inflation metric. The green line reflects revenue and the orange line represents UGF spending. She directed attention to the blue lines, which reflect alternate hypothetical situations if SJR 5 had been implemented in four different years: 2000, 2005, 2010, and 2015. She explained that the three-year moving average concept allows the spending limit to ratchet down to reflect fiscal realities when the base is reset. If SJR 5 had begun in FY 2000 or FY 2005, the appropriation limit would have been fairly restrained by revenue and the overall fiscal situation at the time. In FY 2010 or FY 2015, the appropriation limits under SJR 5 would have started high but adjusted downward based on real spending due to the three-year moving average reset of the base each year. This graph highlighted a couple of years when the spending limit was a little higher than real appropriation. Still, it adjusts and allows the spending limit to move with the changes based on the revenue or spending situation.

[2:02:47 PM](#)

SENATOR SHOWER asked her to recap debates held in a previous legislature on the spending cap using different approaches.

MS. SCHULTZ agreed to do so. She said that it is mathematically possible to incorporate historical revenue into the spending cap, which would allow for some flexibility depending on the revenue situation. Essentially, there are many ways to craft a spending cap. The fundamental question is identifying policy makers' overall goal and determining how much flexibility versus restraint to build in.

SENATOR SHOWER asked if that was why OMB chose this model.

MS. SCHULTZ responded that OMB selected this model because it gives some flexibility but is fundamentally a restrained spending limit. This matches the administration's goal to avoid runaway spending, she said.

[2:04:48 PM](#)

MS. SCHULTZ reviewed slide 7, SJR 5 constitutional appropriation limit: forecast.

She pointed out that it is challenging to model forward appropriation limits that are based on a three-year moving average because not only is it necessary to forecast economic conditions but the model must forecast future spending. She

explained that this slide shows projections over time. The blue line on the graph represents the official Department of Revenue forecast. The orange line represents UGF spending as presented in OMB's 10-year Plan, which is based on some assumptions looking forward on spending.

SENATOR HUGHES stated that the graph contained in members' packets does not match the PowerPoint slide 7.

[2:06:16 PM](#)

At ease

[2:06:34 PM](#)

CHAIR HOLLAND reconvened the meeting.

CHAIR HOLLAND referred members to the graph on the screen rather than the one provided in members' packets.

[2:06:49 PM](#)

MS. SCHULTZ referred to two dotted lines on the graph on slide 7, which reflect different spending caps as proposed by SJR 5. The top one reflects the maximum level of spending given inflation assumptions of 2.25 percent growth in CPI and zero percent population growth. This represents the spending cap if the legislature maximizes spending each year. Of course, the spending limit is a cap but not necessarily a goal, she said. The lower dotted line reflects the spending cap if the spending matches the OMB 10-year plan. It is a much lower cap because the spending is lower, which makes sense. After all, with the three-year average, the spending cap will adjust to the state's level of spending.

[2:07:46 PM](#)

SENATOR HUGHES stated that State v. Wielechowski indicates that the legislature's appropriation power overrides the statutes. If this were adopted, the legislature would have two different provisions that would apply. She asked whether there was any conflict with SJR 5 and the legislature's appropriation power in the Alaska Constitution.

[2:08:51 PM](#)

WILLIAM MILKS, Senior Assistant Attorney General, Legislation & Regulations Section, Civil Division, Department of Law, Juneau, Alaska, responded that the Alaska Constitution provides that the legislature has the power to appropriate. SJR 5 would amend the Alaska Constitution by placing a limit on the legislature's appropriation power, similar to the existing spending limit.

Those two constitutional provisions need to work together. The legislature will have the power of appropriation but it will also be limited to the total sum of the appropriations. It will not change the law as interpreted by the Alaska Supreme Court's State v. Wielechowski case. That case related to programs set out in statute, such as the permanent fund dividend (PFD). He added there have been several other cases that apply. The courts interpreted the Alaska Constitution and determined that the legislature has the power to appropriate but a statute cannot override it. This means that the constitutional appropriation requirement continues regardless of what a particular statute might read. The general constitutional power of the legislature to appropriate would be interpreted in the same way as it is now, which is that there is an overall appropriation limit.

[2:10:49 PM](#)

SENATOR SHOWER related his understanding that the courts can adjudicate. However, if the legislature were to pass SJR 5 and the voters approved it, the prior court case would no longer apply.

MR. MILKS answered yes. He explained that the Alaska Constitution also provides that a constitutional amendment passed by the legislature, ratified by a vote of the people, will amend the Alaska Constitution.

In State v. Wielechowski, the Alaska Supreme Court indicated that the Alaska Constitution was amended to identify specific revenues to be deposited in the permanent fund. This is the principal of the fund; it is dedicated and cannot be accessed without further amending the Alaska Constitution.

[2:12:19 PM](#)

SENATOR HUGHES said that some argue that a spending cap is unnecessary because using the percentage-of-market-value (POMV) draw, even if placed in the constitution, will take care of it. She said she disagreed. For example, if a new industry brought in more revenue, revenues could peak again. She asked if the Alaska Constitution were amended to include a POMV draw, whether it would provide a sufficient spending cap.

[2:13:14 PM](#)

MR. STEININGER responded that SJR 5 should not be considered alone. Other constitutional amendments that constitutionalize the POMV also fix different parts of the state's fiscal problem. He offered his view that solely adding a percentage-of-market-value (POMV) in the Alaska Constitution would not constrain

spending in the future. The increased spending was due to increased oil revenues, he said. It might not be due to oil revenues next time, but some new industry could lead to increased revenue and spending. Without a spending cap, the state will experience the same run-up in expenditures. While the POMV will add stability to a portion of the state's revenues, it alone will not constrain spending. He said that adjusting the spending cap early is the only way to constrain spending effectively when additional revenues are available.

2:14:37 PM

SENATOR HUGHES remarked that some legislators discussed a revenue cap to keep spending down. She disagreed since she tends to like the approach of storing up during the good times to prevent famine. She asked for his thoughts on revenue caps.

MR. STEININGER referred to slide 2 for discussion purposes. He said a revenue cap would not necessarily control expenditures, but it would prevent the state from building up any Rainy Day Accounts. The state would never have built up \$16 billion in savings in FY 2013 if a revenue cap prevented the state from collecting additional revenue. However, these savings allowed the state to weather a decade of declining revenue years.

2:16:03 PM

SENATOR KIEHL referred to slide 3, to the significant run-up of revenues and expenditures. He said he noticed that as revenues dropped, expenditures also dropped from FY 1982 to FY 2001. He stated that the Alaska Constitution allowed that to happen without SJR 5.

MR. STEININGER answered that the graph shows a significant spending constraint to stay near the state's revenues. There were years of deficit spending and several years of revenue surpluses during this time. However, under SJR 5, the dotted line shows what would have occurred. It would have effectively followed the revenue line on the graph, providing a similar constraint for revenue. In years with peak revenues, expenditures jumped up to match without the spending cap. That exponential growth is what the administration hopes to prevent by adjusting the spending cap.

SENATOR KIEHL asked if this chart went back to the time of the first North Slope lease sales, whether revenues would increase and subsequently expenditures would also increase.

MR. STEININGER responded that he did not believe OMB has done that economic modeling. He offered to produce the graph and report back to the committee.

SENATOR KIEHL said he thinks it would occur, but somehow without SJR 5, the state matched its revenues and expenditures pretty well during that timeframe.

2:18:05 PM

SENATOR MYERS offered his view that in the 80s and 90s, revenues and expenditures matched because the legislature lacked state savings accounts to draw from, so it was forced to curtail spending. He asked why the legislature would eliminate the Constitutional Budget Reserve (CBR) payback since it could provide a possible constraint on spending.

MR. STEININGER explained that eliminating the CBR payback is part of the restructuring plan for legislative access to the CBR and how those funds can be spent. If the state has an effective spending cap, the legislature will be less concerned about using the CBR for a revenue source. It will also be less concerned about controlling access to it. SJR 5 would also eliminate the backpay provisions to rework access to the CBR. He characterized it as a policy decision as to how the state's fiscal outlook interacts with the CBR and the reality of the ability to repay the current \$13 to \$14 billion.

2:19:56 PM

SENATOR SHOWER remarked that historically if the legislature has money, it will spend it.

2:20:51 PM

SENATOR KIEHL said that slide 5 does not discuss the reduction that SJR 5 makes and what flows into the CBR in the first place. SJR 5 uses the language "directly" so all manner of taxes that are currently required to be deposited to the CBR would not be required to be deposited. He asked for the rationale for this provision. In response to Chair Holland, he referred to page 2, line 26.

2:21:57 PM

MR. MILKS referred to page 2, line 26 to Section 2 of SJR 5, which uses the language "directly," to clarify. He said this language does not make any substantive change to the dollar amounts deposited to the CBR. This language relates to funds as a result of termination, through settlement or otherwise, of an administrative proceeding or of litigation involving mineral

lease bonuses. However, there has been some ambiguity on one type of revenue source, which is revenue the state receives that is not the result of a litigation or proceeding over what the state is owed, such as oil taxes or royalties. When tariff disputes are resolved, it can result in increased revenue so this language provides clarification as to the monies deposited to the CBR.

2:24:15 PM

SENATOR KIEHL offered to share a Legislative Legal Services memo [of April 30, 2021, from Marie Marx, Legislative Counsel], that raises a significant issue on this matter.

MR. MILKS acknowledged that a longstanding disagreement exists between the Department of Law (DOL) and Legislative Legal Services as to what should be deposited in the Constitutional Budget Reserve (CBR).

2:25:05 PM

SENATOR HUGHES offered her belief that building the state's savings is not a bad idea. However, she does not want the state to impose higher taxes just to collect money for state savings. She offered her belief that spending restraint is essential, which is why the spending cap is important. She said she would support the state lowering taxes if it could still reserve funds for hard times.

2:26:01 PM

SENATOR KIEHL asked for the definition of a state savings account. He said he did not recall a definition.

MR. STEININGER responded that fund transfers or fund capitalization are listed in sections of the state budget for general fund monies to be transferred to a designated general fund (DGF) account. This provides deposits of general fund revenues into a specific account that is used in future years for a purpose. He described capitalization as depositing money to the Public Employees Retirement System (PERS) or other accounts to be spent for a specific purpose. He explained that some expenditures are classified as state spending at the time of transfer to the account and funds from these accounts can be spent without further appropriation. This operates similarly to the way capital projects occur. Expenditures from the state savings account, and some other accounts, are counted in the spending cap in the year spent. However, deposits to the general fund are not counted in the spending cap. Further, fund transfers into or out of the PERS account are not subject to the

cap. He acknowledged that what counts as spending gets a little complicated depending on when funds are counted in the cap, whether it is counted when they are deposited or spent.

2:28:33 PM

SENATOR KIEHL offered his view that in terms of constitutional language, it sounds like "it is whatever we say it is when we are strapped for cash."

MR. STEININGER disagreed. He said the definition of an account-by-account basis is based on how the account is structured and used. For example, money deposited into the Alcohol Fund from designated general fund (DGF) tax revenue does not count as an expenditure for the purpose of the spending cap. However, spending from the Alcohol Fund counts as an expenditure under the cap. This process avoids counting the funds twice: counting the transfer of money into the account and counting spending from the fund. Effectively, it allows money to be deposited into savings accounts for later uses, he said.

2:30:06 PM

MR. MILKS responded that the Alaska Constitution uses the words "state savings account." Mr. Steininger described it as money being deposited to accounts such as the Marine Highway Vessel Fund Account. He explained that funds that are deposited but not spent should not be counted as an appropriation.

2:31:06 PM

SENATOR HUGHES asked how SJR 5 would appear on the ballot, if the question appears first, followed by the resolution's language or if the ballot measure lists a simplified version and the election pamphlet contains the full version.

MR. MILKS suggested that the best way to view it was that the ballot measure will provide the information listed in the constitutional amendment and a summary of the amendment prepared by the Legislative Affairs Agency. He reiterated that the full text of the amendment is listed in the election pamphlet, along with a statement in favor and one in opposition to the amendment.

SENATOR HUGHES asked whether he was describing what was in the pamphlet or the information that is shown on the ballot.

MR. MILKS answered that this information is all contained in the election pamphlet.

SENATOR HUGHES asked whether the question would appear on the ballot and include the amendment text and if the pro and con position statements are in the election pamphlet.

[2:34:07 PM](#)

MR. MILKS related his understanding that is the case. He offered to research this and report back to the committee.

[2:34:41 PM](#)

CHAIR HOLLAND opened public testimony on SJR 5

[2:34:55 PM](#)

MIKE COONS, President, Mat-Su Chapter, Association of Mature Citizens (AMAC) Action, Palmer, Alaska, read into the record a letter by Bob Carlson, President, AMAC Action to Senator Hughes on behalf of AMAC. He read:

We are pleased to support your legislation, SJR 5, proposing an amendment to the Constitution of the State of Alaska to place limits on the increasing appropriations and spending.

Specifically, this amendment effectively reduces the appropriation's available rate of increase of 10 percent to effectively 2.5 percent by requiring that annual appropriations shall be tied to and not exceed the average appropriations made in the previous three fiscal years by more than a cumulative percent change. This approach in effect places the governor on the appropriations and spending absent an emergency.

I am pleased to offer our organizations full support for SJR 5.

MR. COONS said that the Alaska Chapter and the Anchorage Chapter of AMAC supports SJR 5. He said he appreciated the conversation about finite federal funding. He suggested that the legislature will need to work through that issue.

[2:37:24 PM](#)

QUINN TOWNSEND, Policy Manager, Alaska Policy Forum, Pittsburgh, Pennsylvania, read testimony on behalf of the Alaska Policy Forum, as follows:

Chair Holland and members of the Committee, thank you for the opportunity to testify today. I am Quinn Townsend testifying on behalf of Alaska Policy Forum.

Alaska has had a spending problem for years that the state has been attempting to address. While there is not one specific solution to cure all the state's fiscal woes, one important tool to avoid the temptation of overspending - which will hinder, not help the state's economy - is with a functioning constitutional spending cap.

2:37:52 PM

Alaska's current cap uses a formula that calculates allowable spending limits to such high levels that it renders them basically meaningless today. In fact, as of 2018, Alaska spent over 20 percent of its gross domestic product (GDP) and personal income on state government, which is nearly double the average of the highest economically performing states in the country. In contrast, high performing state spend about 11 percent of their GDP and personal income on government. These states - those that spend less and have lower taxes - experience better employment growth, larger net in-migration, higher population growth, higher income growth, and higher GDP. These are all things that Alaska sorely needs to recover from the economic effects of the pandemic.

Instead, Alaska's excessive government spending has inhibited private sector job growth, and the economy could benefit from an effective constitutional spending cap now more than ever. Successful constitutional spending caps have several characteristics. First, the base of expenditures covered by the spending cap needs to be broad. In particular, all state expenditures must be covered, not just general revenue fund items. Fee- or user charge-based activity needs to be brought under the rubric of the cap. Second, there must be provisions for exceptions - such as disasters and appropriations to savings accounts - to the spending limit, but they must be extremely limited and difficult to manipulate. One approach is to allow expenditure increases beyond the constitutional mandate only with a vote of the people and/or a supermajority legislative vote.

Establishing a meaningful spending limit would keep the budgeting process disciplined, hold the government more accountable, control the growth of government,

and make the government more efficient. By implementing a meaningful spending cap, Alaska could see much needed economic growth. Industry and other job creators are drawn to the stability that a true cap on spending would bring. A revised constitutional spending cap is an important step toward responsible budgeting and will encourage a thriving economy.

Alaska Policy Forum encourages establishing a sensible constitutional spending cap.

[2:40:15 PM](#)

BERT HOUGHTALING, representing self, Big Lake, Alaska, said he concurs with testimony by Mr. Coons and Ms. Townsend. He said this is a valid measure. He offered his view that SJR 5 would solve one of the biggest concerns with SJR 1. He suggested the legislature should consider combining both resolutions to inform Alaskans that the state will have stability within the Alaska Permanent Fund Corporation and the permanent fund. It would effectively institute a spending cap and pay Permanent Fund Dividends (PFDs) first. It would use the statutory formula by placing the proposed percentage-of-market-value (POMV) draw into the Alaska Constitution. Further, the combined resolutions will help restrain government via the spending cap.

[2:42:06 PM](#)

CHAIR HOLLAND, after first determining no one wished to testify, closed public testimony on SJR 5.

[SJR 5 was held in committee.]

At ease

SJR 7-CONST. AM: STATE TAX; VOTER APPROVAL

[2:42:18 PM](#)

CHAIR HOLLAND reconvened the meeting and announced the consideration of SENATE JOINT RESOLUTION NO. 7, Proposing amendments to the Constitution of the State of Alaska relating to prohibiting the establishment of a state tax without the approval of the voters of the state; and relating to the initiative process.

[This was the first hearing on SJR 7.]

[2:42:41 PM](#)

MIKE BARNHILL, Deputy Commissioner, Department of Revenue, Juneau, Alaska, began a PowerPoint on SJR 7 by paraphrasing slide 2:

- SJR 7 amends article 9, section 1 of the Alaska Constitution:
- Requires voter approval for any new tax enacted by the legislature
 - Article 9, section 1(b)
 - A form of direct democracy
 - Functionally, authorizes an automatic referendum on new taxes
- Requires legislative approval for any new tax enacted by initiative
 - Article 9, section 1(c)
 - Amends the people's constitutional initiative power
 - Functionally, a form of checks and balances

MR. BARNHILL characterized section 1 (b) as a prepackaged referendum. Whenever the legislature enacts a new state tax, voters will have an opportunity to reject it under this amendment to the constitution. If Alaskans enacted a tax through the initiative process, section 1 (c) would require legislative approval. In this sense, SJR 5 would amend the people's constitutional initiative power to add legislative approval, thus providing a form of checks and balances. He characterized this as essentially coupling direct democracy with representative democracy by requiring both to enact any new state tax.

[2:45:07 PM](#)

SENATOR SHOWER asked if the people have ever taxed themselves in this manner.

MR. BARNHILL answered no; then clarified that the marijuana tax was done by initiative.

[2:45:27 PM](#)

SENATOR MYERS concurred.

[2:45:53 PM](#)

SENATOR KIEHL asked what was wrong that needs fixing in the current referendum language.

MR. BARNHILL said, "Nothing is broken." SJR 7 acknowledges that the state likely cannot rely on oil taxes, so the state will need to rely on taxes to pay for government services. The policy concept in SJR 7 is to provide the people with a more powerful voice and legislative consideration whenever enacting a new state tax.

SENATOR KIEHL pointed out that the state has previously had statewide taxes in place, including those enacted by initiatives and others that were legislatively enacted, which were later repealed. He maintained that he did not understand the need for SJR 7.

MR. BARNHILL restated that the intent of SJR 7 is to give the people a stronger voice.

[2:47:37 PM](#)

SENATOR HUGHES said SJR 7 relates to any new taxes. She described a scenario in which the state enacted a 2 percent sales tax. She asked if the legislature subsequently raises the tax rate to 10 percent whether it would be considered a new tax under SJR 7.

MR. BARNHILL responded that the hypothetical scenario she described would not go before the voters. In the last legislative session, he recalled a resolution before the legislature that proposed amending Alaska's Constitution by requiring any new taxes or increases to taxes would require voter approval. However, the language requiring voter approval for any increases to taxes was removed by SJR 7.

[2:48:25 PM](#)

SENATOR SHOWER stated that the legislature has been discussing tax issues for years. He offered his view that SJR 7 relates to a broad-based tax rather than the marijuana tax, which is more of a user fee. He said that the state will need to enact an income tax, sales tax, or other tax to pay for government services.

[2:49:27 PM](#)

MR. BARNHILL reviewed voter approval in other states on slide 3:

- Other States That Require Voter Approval of New or Increased Taxes:
 - Colorado (1992)
 - "Taxpayer Bill of Rights" (TABOR)

- Requires voter approval of new taxes and increases to existing taxes at state and local level
- Colorado voters approved marijuana tax in 2013
- Missouri (1996)
 - Requires voter approval of tax increases of \$50mm (adj. for inflation)
 - 2018 Proposition D, \$400mm increase to gasoline tax, defeated at polls
- Washington (2001)
 - Requires voter approval of certain increases to real and personal property tax ("levy lid lifts")
 - In recent years, 75% of levy lid lifts have been approved by voter

MR. BARNHILL directed attention to a spreadsheet in member's packets that listed taxes considered in Colorado, Missouri, and Washington. He reported that 5 of 15 tax proposals put before the voters in Colorado were approved and 3 of 11 measures Missouri put before the voters were approved.

[2:51:25 PM](#)

MR. BARNHILL reviewed considerations on slide 4:

- Considerations:
- Voter consent to new taxes may increase tax compliance
 - Hug & Sporri, "Referendums, Trust and Tax Evasion," European J. of Pol. Econ. (Mar. 2011)
- Requirement of voter consent can delay implementation and collection of new revenues
- National Council of State Legislatures has considered generally the pros and cons of "tax and expenditure limitations"

[2:52:06 PM](#)

MR. BARNHILL referred to the Hug & Sporri study listed on the slide. This study showed tax compliance actually increased in

those countries in which the voters were asked to consent to a new tax.

[2:52:28 PM](#)

MR. BARNHILL stated that delays in enacting new taxes requiring voter approval could be disruptive to governments during revenue shortfalls.

MR. BARNHILL pointed to the pros and cons of "Tax and Expenditure Limitations" shown on slides 5 and 6. He stated that this information is posted on NCSL's website, which members can review.

[2:53:17 PM](#)

SENATOR HUGHES asked if any studies found that voter participation increases when tax proposals are on the ballot.

MR. BARNHILL answered that he was unsure of any studies, but it makes sense that more voters would come to the polls.

[2:53:44 PM](#)

CHAIR HOLLAND opened public testimony on SJR 7.

[2:54:08 PM](#)

MIKE COONS, President, Association of Mature American Citizens (AMAC), Mat-Su Chapter, Palmer, Alaska, read into the record a letter by Bob Carlson, President, AMAC Action to Senator Hughes [Original punctuation provided]:

We are pleased to support SJR 7, proposing an amendment to the Constitution of the State of Alaska to prohibit the establishment of state tax without the approval of the voters of the state. Specifically, this amendment provides the citizens of Alaska the right to reject, by popular vote, a new tax. And if they approve it, the amendment provides for a check by the legislature before such a tax could take effect.

This is an excellent approach to preventing runaway taxation and it serves well to protect Alaskans, and specifically seniors on fixed and modest income.

I am pleased to offer our organization's full support for SJR 7.

Bob Carlson, President
AMAC Action

MR. COONS said AMAC's Mat-Su Chapter membership fully supports SJR 7. He offered his belief that the people run government by telling government what to do. SJR 7 provides the means for the voters to make the final decisions on any new taxes in Alaska.

[2:56:55 PM](#)

CHAIR HOLLAND stated that those wishing to provide written testimony could submit them to senate.judiciary@akleg.gov.

[2:57:07 PM](#)

BERT HOUGHTALING, representing self, Big Lake, Alaska, stated that he supports voter approval of any new taxes or any old taxes since taxes affect Alaskans. For example, the House Ways and Means Committee is currently discussing statutory changes to implement taxes. Alaskans will not vote on it if the legislature passes a tax bill. SJR 7 will ensure that legislators will not make decisions on new taxes without first obtaining approval from Alaskans.

[2:59:05 PM](#)

CHAIR HOLLAND closed public testimony on SJR 7.

[2:59:14 PM](#)

SENATOR KIEHL said he still has questions about what constitutes a new tax and how SJR 7 will affect local taxes.

[SJR 7 was held in committee.]

[2:59:55 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:59 p.m.